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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,677	01/08/2004	Charles E. Tharp	ENDY.98470	1134
5251	7590	07/11/2005	EXAMINER	
SHOOK, HARDY & BACON LLP 2555 GRAND BLVD KANSAS CITY, MO 64108			BUSHEY, CHARLES S	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/753,677	THARP, CHARLES E.
	Examiner	Art Unit
	Scott Bushey	1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 June 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-52 is/are pending in the application.  
 4a) Of the above claim(s) 6,7,15,16 and 21-52 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4,8-13 and 17-20 is/are rejected.  
 7) Claim(s) 5 and 14 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date 4-12-04.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species A, as depicted by Figures 1-3, and 10 in the reply filed on June 15, 2005 is acknowledged.
2. Claims 6, 7, 15, 16, and 21-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 15, 2005.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schreiber et al (Figs. 1, 3, and 4; col. 4, lines 18-28; col. 5, lines 23-33).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 8-12, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al.

Schreiber et al (Figs. 1, 3, and 4; col. 4, lines 18-28; col. 5, lines 23-33)

substantially disclose applicant's invention as recited by claims 3, 4, 8-12, and 17-20, except for the specific disclosure that all of the perforations are in the form of slits being either longer, more numerous, or spaced more closely in the lateral second zones than in the top central first zone. Schreiber et al does disclose that the perforations in the second zones (see Fig. 4) are in the form of slits. The reference also teaches that the slits in the lateral second zones are larger than the perforations in the top central first zone to thereby provide for more air flow from the second zones than from the first zone. It is noted that the general state of the art provides for the formation of all perforations within a flexible membrane in the form of slits, such allowing for convenient closure of the perforations during times of air off conditions. Furthermore, it is well within the purview of the prior art to vary the percentage of open area of perforations within a given zone of a flexible membrane by any one of enlarging the perforations, as specifically taught by Schreiber et al, or by reducing the spacing between the perforations within a given zone. It should be noted that enlarging a perforation that is in the form of a slit, as disclosed by the slitted apertures in the second zones of Schreiber et al, would obviously require lengthening the slit relative to the smaller slitted apertures. In any event, it would have been obvious for an artisan at the time of the invention, to provide all of the apertures within the first and second zones of Schreiber et al, in the form of slits, as is conventional within the art, since such would lessen the cost of manufacture, while also providing apertures that would close in a fluid tight manner during air off conditions. Furthermore, it would have been obvious for an

artisan at the time of the invention, to provide a membrane having more open area within the lateral second zones relative to the top central first zone, in view of Schreiber et al, and further to provide such variation in open area between the zones by either lengthening the slits or reducing the spacing between the slits of the lateral second zones relative to the top central first zone, by utilizing the general knowledge within the art at the time of the invention.

***Allowable Subject Matter***

7. Claims 5 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey  
Primary Examiner  
Art Unit 1724

csb  
7-7-05



7-7-05

A handwritten signature in black ink, appearing to read "Scott Bushey", is written over a handwritten date "7-7-05".